

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AARON HOWARD, Individually and On Behalf of
All Others Similarly Situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES INC., THE
BEAR STEARNS COMPANIES INC. EXECUTIVE
COMMITTEE, JAMES E. CAYNE, ALAN D.
SCHWARTZ, WARREN J. SPECTOR, SAMUEL L.
MOLINARO, JR., ALAN C. GREENBERG and JOHN
DOES 1-10,

Defendants.

Civil Action No: 08 Civ. 2804
(RWS)(HBP)

ELECTRONICALLY FILED

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**DECLARATION OF ANDREW E. LENCYK IN SUPPORT OF *WEBER* PLAINTIFFS'
REPLY TO DEFENDANTS' RESPONSE TO MOTIONS FOR CONSOLIDATION**

<p>ESTELLE WEBER, individually, on behalf of the Bear Stearns Companies Inc. Employee Stock Ownership Plan, and all others similarly situated,</p> <p>Plaintiff,</p> <p>v.</p> <p>THE BEAR STEARNS COMPANIES, INC., CUSTODIAL TRUST COMPANY, JAMES CAYNE, ALAN SCHWARTZ, WARREN SPECTOR, SAMUEL MOLINARO, ALAN GREENBERG, and JOHN DOES 1 - 20,</p> <p>Defendants.</p>	<p>Civil Action No: 08 Civ. 2870 (RWS)(JCF)</p>
<p>ANTHONY PISANO, individually and on behalf of all others similarly situated,</p> <p>Plaintiff,</p> <p>v.</p> <p>THE BEAR STEARNS COMPANIES, INC., JAMES CAYNE, ALAN D. SCHWARTZ, WARREN J. SPECTOR, SAMUEL L. MOLINARO, JR., ALAN C. GREENBERG, and JOHN AND JANE DOES 1-20,</p> <p>Defendants.</p>	<p>Civil Action No: 08 Civ. 3006 (UA)</p>
<p>HANS MENOS, individually and on behalf of all others similarly situated,</p> <p>Plaintiff,</p> <p>v.</p> <p>THE BEAR STEARNS COMPANIES, INC., JAMES CAYNE, ALAN D. SCHWARTZ, WARREN J. SPECTOR, SAMUEL L. MOLINARO, JR., ALAN C. GREENBERG, and JOHN AND JANE DOES 1-10,</p> <p>Defendants.</p>	<p>Civil Action No: 08 Civ. 3035 (RWS)(HBP)</p>

<p>IRA GEWIRTZ, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>THE BEAR STEARNS COMPANIES, INC., JAMES CAYNE, ALAN D. SCHWARTZ, WARREN J. SPECTOR, SAMUEL L. MOLINARO, JR., ALAN C. GREENBERG, and JOHN AND JANE DOES 1-20,</p> <p>Defendants.</p>	<p>Civil Action No: 08 Civ. 3089 (RWS)(JCF)</p>
<p>DREW V. LOUNSBURY, Individually and On Behalf of All Others Similarly Situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>THE BEAR STEARNS COMPANIES, INC., JAMES E. CAYNE, ALAN C. GREENBERG, ALAN D. SCHWARTZ, PAUL A. NOVELLY, FRANK T. NICKELL, FREDERICK V. SALERNO, VINCENT TESE, and JOHN AND JANE DOES 1-10,</p> <p>Defendants.</p>	<p>Civil Action No: 08 Civ. 3326 (UA)</p>
<p>SHELDEN GREENBERG, Individually and On Behalf of All Others Similarly Situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>THE BEAR STEARNS COMPANIES, INC., JAMES E. CAYNE, ALAN D. SCHWARTZ, WARREN J. SPECTOR, SAMUEL L. MOLINARO, ALAN C. GREENBERG, and JOHN AND JANE DOES 1-10,</p> <p>Defendants.</p>	<p>Civil Action No: 08 Civ. 3334 (UA)</p>

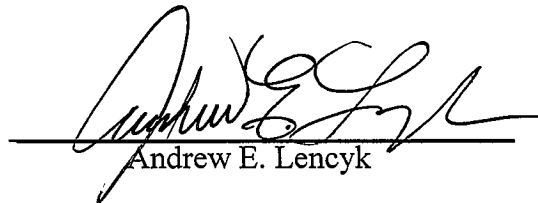
<p>SCOTT WETTERSTEN, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>THE BEAR STEARNS COMPANIES, INC., JAMES E. CAYNE, ALAN D. SCHWARTZ, WARREN J. SPECTOR, SAMUEL L. MOLINARO, ALAN C. GREENBERG, and JOHN AND JANE DOES 1-10,</p> <p>Defendants.</p>	<p>Civil Action No: 08 Civ. 3351 (UA)</p>
<p>RITA RUSIN, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>THE BEAR STEARNS COMPANIES, INC., JAMES CAYNE, ALAN D. SCHWARTZ, WARREN J. SPECTOR, SAMUEL L. MOLINARO, JR., ALAN C. GREENBERG, and JOHN AND JANE DOES 1-20,</p> <p>Defendants.</p>	<p>Civil Action No: 08 Civ. 3441 (UA)</p>
<p>LAWRENCE FINK, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>THE BEAR STEARNS COMPANIES, INC., JAMES CAYNE, ALAN D. SCHWARTZ, WARREN J. SPECTOR, SAMUEL L. MOLINARO, JR., ALAN C. GREENBERG, and JOHN AND JANE DOES 1-20,</p> <p>Defendants.</p>	<p>Civil Action No: 08 Civ. 3602 (RWS)(JCF)</p>

I, ANDREW E. LENCYK, declare the following under penalty of perjury of the laws of the State of New York:

1. I am the a partner at the law firm of Wolf Popper LLP ("Wolf Popper"), attorneys for Plaintiff Estelle Weber and the putative class members in the above-captioned Bear Stearns ERISA Litigation. I make this declaration in support of The *Weber* Plaintiffs' Reply To Defendants' Response To Motions For Consolidation, submitted herewith. I am familiar with the facts set forth herein and can and will testify to them if necessary.

2. Attached hereto as **Exhibit A** is a true and correct copy of the discovery order in *Tittle v. Enron*, N. H-01-4236, at 7 (S.D. Tex. Jan. 18, 2002).

Dated: April 18, 2008
New York New York.



Andrew E. Lencyk

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED

PAMELA M. TITTLE, THOMAS O.
PADGETT, AND GARY S. DREADIN,
On Behalf of Themselves and a
Class of Persons Similarly
Situated,

Plaintiffs,

VS.

ENRON CORP., an Oregon
Corporation, MARY K. JOYCE,
ROBERT A. BELFER, NORMAN P.
BLAKE, RONNIE C. CHAN, JOHN H.
DUNCAN, WENDY L. GRAMM, KEN L.
HARRISON, ROBERT K. JAEDICKE,
KENNETH L. LAY, CHARLES A.
LEMAISTRE, JEFFREY K. SKILLING,
JOHN A. URQUHART, JOHN WAKEHAM,
THISBERT S. WINOKUR, JOHN
MENDELSON, JEROME J. MEYER,
REBECCA MARK-JUSBACHE, PAULO
V. FERRAZ, PEREIRA, FRANK
SAVAGE, Individually and as
constituting the Board of
Directors of Enron Corporation,
JAMES S. PRENTICE, AND JOHN
AND JANE DOES 2-20,

Defendants.

CIVIL ACTION NO. H-01-3913 ✓
LEAD CASE CONSOLIDATED WITH

JAN 22 2002

Michael N. Milby, Clerk of Court

ROY E. RINARD AND STEVE LACEY,
Plaintiffs,

VS.

ENRON CORPORATION AND THE
NORTHERN TRUST COMPANY,

Defendants

CIVIL ACTION NO. H-01-4060

MICHAEL P. HARNEY, On Behalf
Of Himself and All Others
Similarly Situated,

Plaintiff,

VS.

CIVIL ACTION NO. H-01-4063

ENRON CORPORATION, PHILIP J.
BAZELIDES, MARY K, JOYCE,
KENNETH L. LAY, JEFFREY K.
SKILLING, ROBERT A. BELFER,
NORMAN P. BLAKE, JR., RONNIE
C. CHAN, ROBERT K, JAEDICKE,
CHARLES A. LEMAISTRE, JOHN A.
URQUHART, JOHN WAKEHAM, HERBERT S.
WINOKUR, KEN L. HARRISON,
JOHN MENDELSON, JEROME J.
MEYER, JOHN H. DUNCAN, JOE H.
FOY, WENDY L. GRAMM, REBECCA
MARK-JUSBACHE, PAULO V. FERRAZ
PEREIRA, AND FRANK SAVAGE,

Defendants

GARY W. KEMPER, PHILIP
CLIFFORD, ALAN E. RYMAN, ROGER
BOYCE, AND WILLIAM J. QUINLAN,
On Behalf of Themselves and
Others Similarly Situated,

Plaintiffs,

VS.

CIVIL ACTION NO. H-01-4089

ENRON CORPORATION, ENRON
CORPORATION SAVINGS PLAN
ADMINISTRATIVE COMMITTEE,
JAMES S. PRENTICE, JOHN DOES
NOS. 1-10, ARTHUR ANDERSEN
LLP, THE NORTHER TRUST COMPANY,
AND NORTHERN TRUST RETIREMENT
CONSULTING, LLP,

Defendants

BETTY J. CLARK, Individually §
and On Behalf of Others §
Similarly Situated, §

Plaintiff, §

VS. §

CIVIL ACTION NO. H-01-4125

ENRON CORPORATION, THE §
NORTHER TRUST COMPANY, HEWITT §
ASSOCIATES, JAMES S. PRENTICE, §
AND MARY K. JOYCE, §

Defendants §

DOROTHY RICKETTS, On Behalf of §
the Enron Corporation Savings §
Plan and its Participants, §

PLAINTIFF, §

VS. §

CIVIL ACTION NO. 01-4128

ENRON CORPORATION, ROBERT A. §
BELFER, NORMAN P. BLAKE, JR., §
RONNIE C. CHAN, JOHN H. DUNCAN, §
WENDY L. GRAMM, KEN L. HARRISON §
ROBERT K. JAEDICKE, KENNETH L. §
LAY, CHARLES A. LEMAISTRE, §
JEFFREY K. SKILLING, JOHN A. §
URQUHART, JOHN WAKEHAM, HERBERT §
S. WINOKUR, JOHN MENDELSON, §
JEROME J. MEYER, REBECCA MARK- §
JUSBACHE, PAULO V. FERRAZ §
PEREIRA, AND FRANK SAVAGE, §

Defendants §

RICHARD POTTRATZ AND BRADLEY §
DIEBNER, On Behalf of §
themselves and All Others §
Similarly Situated, §

Plaintiffs, §

VS. §

CIVIL ACTION NO. H-01-4150

ENRON CORPORATION, PHILIP J. §
BAZELIDES, ROBERT A. BELFER, §
NORMAN P. BLAKE, JR., RONNIE C. §
CHAN, JOHN H. DUNCAN, JOE H. §
FOY, WENDY L. GRAMM, KEN L. §
HARRISON, ROBERT K. JAEDICKE, §
MARY K. JOYCE, KENNETH L. LAY, §
CHARLES A. LEMAISTRE, JOHN §
MENDELSON, JEROME J. MEYER, §
PAULO V. FERRAZ PEREIRA, JAMES §
PRENTICE, FRANK SAVAGE, JEFFREYS §
K. SKILLING, JOHN A. URQUHART, §
JOHN WAKEHAM, AND HERBERT S. §
WINOKUR, §

Defendants §

CATHERINE STEVENS, WAYNE §
STEVENS, CHARLES BRADLEY, AND §
WAYNE AMONDSON, §

Plaintiffs, §

VS. §

CIVIL ACTION NO. H-01-4208

ENRON CORPORATION, JOHN DOES §
NOS. 1-10, JAMES S. PRENTICE, §
MARY K. JOYCE, AND THE NORTHERNS §
TRUST COMPANY, §

Defendants §

CHARLES PRESTWOOD, On Behalf
of Himself and All Others
Similarly Situated,

Plaintiffs,

VS.

WILLIAM D. GATHMAN AND THE
NORTHERN TRUST COMPANY,

Defendants

CIVIL ACTION NO. H-01-4209

JOHN WALT AND MARK COURTNEY,
On Behalf of Themselves and
Others Similarly Situated,

Plaintiffs,

VS.

KENNETH L. LAY, JEFF SKILLING,
ROBERT A. BELFER, ANDREW
FASTOW, NORMAN P. BLAKE, JR.,
RONNIE C. CHAN, JOHN H. DUNCAN,
WENDY L. GRAMM, ROBERT K.
JAEDICKE, JOHN MENDELSON,
PAULO V. FERRAZ PEREIRA, FRANK
SAVAGE, JOHN WAKEHAM, HERBERT
S. WINOKUR, JR., ARTHUR
ANDERSEN LLP, AND CHARLES A.
LEMAISTRE,

Defendants

CIVIL ACTION NO. H-01-4299

JOHN L. MOORE AND LINDA BRYANT, §
 Individually and on behalf of §
 the Enron Corporation Employee §
 Savings Plan, the A--Employee §
 Stock Option Program, the Enron §
 Corporation Cash Balance Plan, §
 and the Enron Employee Stock §
 Ownership Plan and on Behalf of §
 a Class of all Other Persons §
 Similarly Situated, §

Plaintiffs, §

VS. §

CIVIL ACTION NO. H-01-4236 §

ENRON CORPORATION, THE §
 ADMINISTRATIVE COMMITTEE OF THE §
 ENRON CORPORATION EMPLOYEES §
 SAVINGS PLAN, THE ADMINISTRA- §
 TIVE COMMITTEE OF THE ALL- §
 EMPLOYEE STOCK OPTION PROGRAM, §
 THE ADMINISTRATIVE COMMITTEE OF §
 THE ENRON CORPORATION CASH §
 BALANCE PLAN, THE ADMINISTRA- §
 TIVE COMMITTEE OF THE ENRON §
 CORPORATION EMPLOYEE STOCK §
 OWNERSHIP PLAN, JOHN DOES NOS. §
 1-30, Fiduciaries, AND RICHARD §
 ROES NOS. 1-30, Enron §
 Corporation Directors and §
 Insiders, §

Defendants. §

ORDER

Pending before the Court in consolidated lead action case No. H-01-3913 are two objections to Judge Rosenthal's December 12, 2001 order of consolidation, both filed by Plaintiffs from member cases H-01-4060, H-01-4208, and H-01-4209 (instruments #11 and 16).

Because their claims are grounded in ERISA, Plaintiffs' major concern about consolidation with the securities fraud cases appears to be the prejudice they would experience if their case

were delayed because of the procedural safeguards built into the PSLRA, especially the selection of lead plaintiffs and lead counsel and the stay on discovery pending a ruling on motions to dismiss. 15 I.S.C. § 77z-1(b).

The effect of Enron Corporation's bankruptcy on all cases in which it is a named Defendant must be determined as a threshold matter and will be addressed at the scheduling conference set on February 25, 2002. Parties may choose to go forward by severing Enron Corporation from their suits or to seek from the bankruptcy court a lifting of the automatic stay for determination of liability in these actions, or to stay these cases and await the result of the bankruptcy proceedings.

Assuming that the litigation proceeds, given its size and complexity and the fact that many of the parties and counsel are involved in more than one group of cases, the Court believes that the savings in time, expense, and harassment of parties and witnesses by consolidation of discovery to the extent possible more than balances the amount of inconvenience and delay that may be experienced. The Court seeks to reassure Plaintiffs that it does not intend to rigidly impose on the ERISA cases the delayed schedule or procedural hoops required for the securities fraud cases governed by the PSLRA. Every effort will be made to accommodate both groups. Because Defendants are not permitted to object to motions for appointment of Lead Plaintiffs and Lead Counsel and because selection of Lead Plaintiffs and Lead Counsel will streamline preparations leading up to the February 15, 2002

hearing, the automatic stay imposed by Enron's bankruptcy will not interfere with the Court's determination of that matter in the securities fraud action, and the Court intends to address the motions as soon as the last one is ripe. If the securities fraud action goes forward, the Court will make every effort to expedite the pleading of the motion to dismiss and response time and issue a ruling. Since discovery by the ERISA and PSLRA parties will necessarily overlap, some flexibility in scheduling discovery by both groups will be necessary, but the Court is optimistic that as professionals and officers of the court, counsel can compromise and agree on these matters. Therefore Court OVERRULES Plaintiffs' objections.

The Court further

ORDERS that from this point on, all pleadings relating to the ERISA actions shall be filed solely in lead case H-01-3913, using the following style:

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PAMELA M. TITTLE, on behalf of §
herself and a class of persons §
similarly situated, ET AL., §

Plaintiffs, §

VS. §

ENRON CORP., an Oregon §
Corporation, ET AL., §

Defendants. §

CIVIL ACTION NO. H-01-3913
AND CONSOLIDATED CASES

If the parties' pleadings relate to all three groups of Enron cases (securities fraud suits, shareholders' derivative suits, and ERISA suits), they should be filed in each lead case using the following style:

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARK NEWBY, ET AL.,	§	
	§	
Plaintiffs	§	
	§	
VS.	§	CIVIL ACTION NO. H-01-3624
	§	AND CONSOLIDATED CASES
ENRON CORPORATION, ET AL.,	§	
	§	
Defendants	§	

PIRRELLI ARMSTRONG TIRE	§	
CORPORATION RETIREE MEDICAL	§	
BENEFITS TRUST, Derivatively On	§	
Behalf of ENRON CORPORATION,	§	
ET. AL.,	§	
Plaintiffs	§	
	§	
VS.	§	CIVIL ACTION NO. H-01-3645
	§	AND CONSOLIDATED CASES
	§	
KENNETH LAY, ET AL.,	§	
	§	
Defendants	§	

PAMELA M. TITTLE, on behalf of	§	
herself and a class of persons	§	
similarly situated, ET AL.,	§	
	§	
Plaintiffs	§	
	§	
VS.	§	CIVIL ACTION NO. H-01-3913
	§	AND CONSOLIDATED CASES
ENRON CORP., an Oregon	§	
Corporation, ET AL.,	§	
	§	
Defendants.	§	

Furthermore, the Court

ORDERS that the ERISA member cases that have been consolidated into lead case H-01-3913 (i.e., Civil Action Nos. H-01-4060, H-01-4063, H-01-4089, H-01-4125, H-01-4128, H-01-4150, H-01-4208, H-01-4209, H-01-4299, and H-01-4326) are hereby ADMINISTRATIVELY CLOSED.

SIGNED at Houston, Texas, this 18th day of January, 2002.


MELINDA HARMON
UNITED STATES DISTRICT JUDGE